

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **200831017**
Release Date: 8/1/2008

Index Number: 9100.00-00, 852.00-00,
853.00-00, 855.00-00,
1276.00-00, 1296.00-00

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:2 – PLR-141645-07
Date:
April 16, 2008

Legend:

Fund 1 =

Fund 2 =

Fund 3 =

Fund 4 =

Fund 5 =

Fund 6 =

Fund 7 =

Fund 8 =

Fund 9 =

PLR-141645-07

2

Fund 10 =

Fund 11 =

Fund 12 =

Fund 13 =

Fund 14 =

Fund 15 =

Fund 16 =

Fund 17 =

Fund 18 =

Fund 19 =

Fund 20 =

Fund 21 =

Fund 22 =

Fund 23 =

Year =

Advisor =

Accountants =

Extended Date =

Filing Date =

Dear :

This is in reply to a letter dated September 10, 2007, requesting on behalf of Funds 1 through 23 ("Funds") an extension of time under section 301.9100-1 of the Procedure and Administration Regulations to file income tax returns in order to make, in the case of each Fund, an election under section 855 of the Internal Revenue Code; in the case of Fund 17, an election under section 853; in the case of Funds 1 through 3, 5 through 8, 10, 12 through 18, and 20 through 23, an election under section 1276(b)(2); in the case of Fund 16, an election under section 1296; and in the case of Funds 2, 6, 14, 16, 18 and 21, an election under section 852 and section 1.852-11(f)(1) of the Income Tax Regulations.

FACTS

Each Fund is a corporation that elected in years prior to Year to be treated as a regulated investment company ("RIC") under Subchapter M (sections 851 et seq.) of the Internal Revenue Code.

Accountants are responsible for preparing and reviewing the tax returns and extension requests of Funds, including any Federal income tax elections.

Advisor is responsible for reviewing Funds' tax returns and extension requests and arranging for the execution and filing of such returns and extensions requests.

Each Fund filed a timely extension request for Year. The due date for the federal income tax return for Year was Extended Date.

Accountants sent the tax returns for Year to Advisor. Advisor received the returns at least three days before Extended Date. One day before Extended Date, an inexperienced employee of Advisor mailed the returns to an incorrect filing address, where the returns were received on Extended Date. The returns were sent back to Advisor, which mailed them to the correct address ten days after Extended Date.

The returns filed by Fund included the elections under section 853, 855(a), 1276(b)(2), 1296, 852 of the Code and section 1-852-11(f) of the income tax regulations.

Each Fund has submitted the affidavit of Advisor's Director in support of this requested ruling.

Each Fund makes the following representations:

1. The request for relief was filed by Fund before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not result in Fund having a lower tax liability in the aggregate for all years to which the regulatory election applies than Fund would have had if the election had been timely made (taking into account the time value of money).
3. Fund does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time Fund requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Fund did not choose to not file the election.

LAW AND ANALYSIS

Under section 855(a) of the Code, if a RIC declares a dividend before the due date (including extensions) for filing its income tax return for a taxable year, and distributes the dividend in the 12-month period following the end of the tax year (and not later than the date of the first regular dividend payment made after the declaration), the dividend is considered paid during the taxable year, if the RIC so elects on its income tax return for the taxable year. Under section 1.855-1(b)(1) of the Income Tax Regulations, the election under section 855(a) of the Code must be made in the return filed by the RIC for the taxable year.

Section 853(a) of the Code provides that if more than 50% of the value of a RIC's assets at the close of the taxable year consist of stock or securities in foreign corporations, and the RIC meets the requirements of Section 852(a) for the taxable year, the RIC may elect to have its shareholders treated as if they had paid their proportionate share of certain foreign taxes paid by the RIC. Section 1.853-4 of the regulations provides that an election under section 853 must be made not later than the time prescribed for filing the RIC's return (including extensions) and is irrevocable with respect to the dividend (or portion thereof), and the foreign taxes paid with respect thereto, to which the election applies.

Section 1276(b)(2) of the Code provides that gain on the disposition of any market discount bond is treated as ordinary income to the extent of accrued market discount on the bond. Section 1278(a)(1) defines market discount bond as any bond having market discount with certain exceptions. Market discount is generally defined by section 1278(a)(2) as the excess of the stated redemption price of a bond at maturity over the basis of the bond immediately after its acquisition. Section 1276(b)(1) states that except as otherwise provided, market discount shall be calculated using the ratable accrual method. Section 1276(b) allows an election by a taxpayer to calculate the accrued market discount using the constant interest rate. This irrevocable election is made on a bond by bond basis, and must be made no later than the due date (including extensions) for the income tax return for which the taxpayer is required to determine accrued market discount. (See, Rev. Proc. 92-67 (1992-2 C.B. 429, Section 2.12).

Section 1296(a) provides that in the case of marketable stock in a passive foreign investment company which is owned by a US person at the close of any taxable year, at the election of such person, the excess of the fair market value at the close of such year over its adjusted basis shall be included in gross income for such taxable year. Section 1296(e)(2) states that in the case of a RIC issuing stock that is redeemable at its net asset value, all stock in a passive foreign investment company which it owns shall be treated as marketable stock for purposes of this section.

Section 1.1296-1(h)(1)(i) of the regulations states that section 1296 election must make an election for the taxable year on or before the due date (including extensions) of the US person's income tax return for that year.

Section 852(b)(2)(C) defines a capital gain dividend as any dividend or part thereof which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of the taxable year. The statute further states that for purposes of this subparagraph, the amount of net capital gain for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net long-term capital loss attributable to transactions after October 31 of such year. Such loss shall be treated as arising on the first day of the next taxable year.

Section 1.852-11(f)(1) of the regulations states that a RIC may elect, in accordance with the procedures in paragraph (i) of that provision to compute taxable income without regard to part or all of any post-October capital loss or post-October currency loss for that year. Moreover, the regulation provides that a RIC may make an election under paragraph (i)(1) of that section by completing its income tax return (including any necessary schedules) for that taxable year in accordance with the instructions for the forms applicable to the election.

Section 301.9100-1(c) of the regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 301.9100-1(b) as an election whose deadline is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based upon the facts and representations submitted, we conclude that each Fund has shown good cause for granting a reasonable extension of time to make the elections provided under sections, 855(a), 853, 1276(b)(2), 1296(a), 852 of the Code, and section 1.852-11(f) of the income tax regulations. Accordingly, each Fund's income tax return for Year, which has already been filed containing elections under sections, 855(a), 853, 1276(b)(2), 1296(a), 852 of the Code, and section 1.852-11(f) of the income tax regulations, is treated as timely filed for purposes of making those elections.

This ruling is limited to the timeliness of the filing of each Fund's income tax return for purposes of the elections under sections 853, 855(a), 1276(b)(2), 1296, 852 of the Code and section 1.852-11(f) of the income tax regulations. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No

opinion is expressed with regard to whether any Fund otherwise qualifies as a RIC under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of a Fund is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax return involved, the director's office will determine such tax liability for the year involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayers that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the terms of a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

Thomas M. Preston
Thomas M. Preston
Senior Counsel, Branch 2
Office of the Associate Chief Counsel
(Financial Institutions & Products)